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## THE INITIATIVE IN SWITZERLAND.

Mr. LA FOLLETTE presented the following

REPORT TO THE DEPARTMENT OF STATE BY THE AMERICAN  
VICE-CONSUL AT BERNE, SWITZERLAND, CONCERNING THE  
PRACTICAL WORKINGS OF THE "POPULAR INITIATIVE" IN  
SWITZERLAND.

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## THE PRACTICAL WORKINGS OF THE "POPULAR INITIATIVE" IN SWITZERLAND.

[Report to the Department of State, Washington, D. C., by LEO J. FRANKENTHAL, American vice-consul,  
Berne, Switzerland, May, 1908.]

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### INTRODUCTION.

The experience of Switzerland, where the initiative is in use, is referred to by its supporters in the United States as proving that success attends its introduction. It is the purpose of this report to show exactly what the initiative has accomplished in Switzerland. It will also be necessary to treat of the referendum to some extent, for the reason that an initiative project, if supported by the necessary number of citizens, must be subsequently passed upon by the entire voting population before its acceptance or rejection can be determined. While a referendum may be held without a preceding initiative, no initiative can be invoked without being followed by a referendum. In order adequately to permit of systematic treatment of the subject, the conditions under which these institutions flourish must be considered.



Only a slight parallel can be drawn between Switzerland and the United States. The Swiss constitution was modeled to a certain extent upon American lines; there are political divisions that correspond roughly to the American States, and both countries are republics. Here, however, the resemblance ceases. The form of government is in many respects dissimilar, and the fundamental matter of constitutionality of Swiss laws has not reached its ultimate development. Switzerland contains 16,000 square miles and is one-half as large as the State of Maine. It is subdivided into 22 Cantons, 3 of which are repartitioned into half Cantons, and the sevary in size from Graubünden, with 2,765 square miles, to Zug, with 22 square miles, and in population from Berne, with 620,205 inhabitants, to Unterwalden, with 13,360 inhabitants. Switzerland is not a rich country and its soil is not generous. Its boundaries can not extend, and it can not annex any new territory. Every square foot of available land is cultivated, and even the few whips of grass on the steep slopes are gathered and carried to the valleys. The population is largely rural. There are only 18 cities and towns containing more than 10,000 inhabitants, and of these only 3 with over 100,000—Zürich, Basel, and Geneva. The people are industrious. Taxes are high, wages are low. Their great industries are the growth of necessity; the manufacture from relatively low-priced imported raw materials of high-priced specialties for export—embroidery, silks, watches, machines.

Switzerland has no coal or iron mines. The main railways (1,500 miles), the telegraph and telephone systems are owned and operated by the Government, and the manufacture of powder, the sale of salt, and the production of alcohol are government monopolies. Switzerland has no coast line and no colonies. There is no organized corruption. What graft exists is upon such a small scale as to be virtually nil. Every man knows his neighbor's business. There are rich people, it is true, but no overpowering capitalistic oppression. This is probably not so much on account of restrictive laws as by reason of the natural resources, or, more properly speaking, lack of resources, of the country. From 3,000 to 5,000 out of a population of 3,525,256 emigrate yearly to better their condition. Most of them go to the United States.

The upper house of Congress, called the Council of States, exercises none of the checks of the American Senate. It does not concur in appointments, which are made by the Federal Council alone, and it is virtually only a second House of Representatives, consisting of two members from each Canton. In the Cantons the great difference between the Swiss and the American systems is that the Cantons possess an assembly of only one chamber, together with an executive council of several members, which acts as a unit similar to the Federal Council. There is no one-man power in Switzerland, as all executive power is placed in the hands of boards or commissions. These have the appointing power, and in the Federal Government the council appoints even the letter carriers and telegraph operators.

The organization of Swiss citizenship is so fundamentally different from that of the United States that it must be considered. Primarily, a Swiss is a citizen of the community (Gemeinde) to which his family belongs, and he possesses certain rights in this community of which he can not be deprived; interest in the profit of commune property, etc. It is no easy matter for a foreigner to become natural-



ized in Switzerland. Two years' residence is required, and some community must be ready to accept him upon the purchase of community rights for a sum varying in proportion to the importance of the commune and the privileges it extends. The Federal Government must give its permission to his naturalization and the Canton is then authorized to admit him. In Switzerland the saying runs, "Once a Swiss always a Swiss." The naturalization of a Swiss in a foreign country does not alter his civil status in Switzerland. Only after he has renounced his allegiance to Switzerland in writing, and in accordance with certain forms, and his renunciation is accepted by his home community and by the cantonal council, is his name stricken from the rolls of citizens and his release an accomplished fact. Every Swiss is in possession of documentary evidence of his citizenship in the form of a certificate called a "Heimatschein," and when he locates in a different town he is obliged to deposit his papers with the police in order to receive permission to live there. Thus the identity of every Swiss is easily established. Colonization for voting purposes, or repeating at elections, is a practical impossibility.

Before each election the citizen receives by mail from the local authorities a card addressed to him personally, upon which is printed the place, time, and subject of the election in which he may participate. He presents this card at the polls and is given a ballot for each of the matters upon which he may vote. The card is dropped into a box, and the ballots when counted must agree with the number of the cards. Districts are so small, the citizenship system is so perfect, that fraud is not possible.

The Swiss are not an excitable people. Questions that caused marked divisions and aroused passion were settled long ago. Business never awaits the outcome of voting. There are no periodical presidential elections or upheavals. Vituperation seldom occurs, and then only in local matters in elections where the personal equation comes to the front. Here we find talk of the "onslaught of the Socialists," the "force of capital," etc. The Socialistic party is, properly speaking, a labor party. Other political parties are the "Progressive Democrats," "Conservative Democrats," the "Liberal Democrats," and the "Catholic People's party."

#### ELECTION AND VOTING QUALIFICATIONS.

The privilege to vote commences in the Confederation when the citizen has passed the age of 20, and this age is also accepted by most of the cantons. In the cantons Schwyz and Underwalden a youth of 18 is permitted to vote, in Zug 19 years is the limit, while in Tessin a young man of 20 is eligible for election to the cantonal council, and in many of the cantons to the bench upon reaching the age of 25. Deprivation of civil rights by a decision of the courts or an administrative board, nonpayment of the military exemption tax, unpaid judgments, the institution of criminal proceedings if the citizen has been found guilty, etc., disqualify him from voting. There is no direct recall of representatives, but any of the above would have the effect of disqualifying him from being elected or continuing to hold office. Elections are frequent; the representatives are very close to the people and are elected by comparatively small constituencies. There is a complicated system providing for the removal or suspension of administrative officials for cause, but

no official or employee may be ousted excepting by decision of a court. In some parts of the country a citizen is obliged to accept nomination and eventual election to a local office or as a judge, and only after he has served one term is he allowed to decline a second if he so desires.

Judges of the lower courts are elected by the people. The supreme court of Switzerland is elected by the Federal Assembly, each member for a period of six years. Continuation in office is the rule rather than the exception throughout Switzerland. Salaries, as well as wages, are very low. The members of the Federal Council receive \$3,000 a year, and are not allowed to engage in any other business. The chiefs of departments, such as the commissioner of patents, etc., receive \$1,600 per year, and other salaries are in proportion. The members of cantonal assemblies receive up to \$3 for each day they attend the sessions, and the national representatives are paid \$4.

There are no restrictions to prohibit a representative from making contracts, either directly or indirectly, or through a firm in which he is interested, with the federal, cantonal, or local governments; neither are they restricted in the number of offices which they may hold at the same time. I know Swiss congressmen who are also cantonal representatives and members of their local town council at the same time, besides being interested in firms that have contract with either the local, cantonal, or federal authorities for the delivery of material, the erection of public buildings, etc.

Voting is obligatory on cantonal matters in the Cantons Zürich, Schaffhausen, St. Gallen, Aargau, and Thurgau. These Cantons show average votes of from 70 to 80 per cent; but the obligatory measure is not rigorously enforced. Small fines are imposed upon people failing to vote unless an adequate excuse is made. This includes illness in the family, mourning for a relative, absence, birth in the family, etc. St. Gallen goes further than its neighbors and excuses the parent and godparent from the duty of voting if their presence is necessary at a christening. Those who have "official business" to attend to are also excused. In Thurgau forestry officials in service and clergymen who intend to preach on election day are not required to vote unless they desire. There is considerable objection in many parts of Switzerland to obligatory voting. It appears to be a question as to which is the more beneficial for the people as a whole—a comparatively small number of votes cast by persons who have conscientiously considered a projected law or who vote according to party dictation, or a large number of votes, many of which represent hasty and perhaps ill-considered judgment by a multitude of voters who have no interest whatever in the measure, and who vote only because they are forced to. But the old adage of the horse and the water may be transposed for present purposes into this, You may force a voter to the polling place, but you can not prevent him from casting a blank or mutilated ballot. This refers, naturally, to referendum measures and not to the election of persons. Let us refer to the statistics of the Canton of Zürich, which is the most populous of those in which obligatory voting is in force. Of recent laws voted upon in this Canton in the last few years the following figures are taken at random: 1906, law concerning a change in certain communal boundaries, 10,744 blank or mutilated ballots out of 59,538; law concerning the right of

voting, number of inhabitants in electoral districts, etc., 11,380 blank or mutilated ballots out of 75,504; law concerning protection of game, 5,374 blank or mutilated ballots out of 71,933. Some of the figures of former years are much higher.

Elections are usually held on Sundays, and sometimes the polls are open Saturday nights for a couple of hours. If the weather is good, large numbers of citizens with their families leave the towns for a day's excursion; the young men are interested in sport, mountain climbing, and football, and this coupled with general indifference explains the small participation in elections. There is no question but what the Swiss in general are fatigued by the frequency with which they are called to vote. This amounts to several times a year, and in cantons where the obligatory referendum is enforced a prolific legislature will add to this number.

The former dominant influence of families, with its attending nepotism, has left its mark upon legislation and we still find in many of the cantonal constitutions articles prohibiting the appointment or election of relatives to councils, boards, and commissions. The usual degree of relationship covered by these restrictions are father and son, father-in-law and son-in-law, step-father and step-son, brother and step-brother, brothers-in-law, uncle, and nephew. In fact, many modern legislative measures, the reason of which is perhaps not clear to one not familiar with Swiss history, are the outcome of some act of historical significance, or depend for their origin upon some ancient tradition.

In the election of representatives, whether to the cantonal assemblies or the national congress, the Swiss do not set their seal of approval in advance upon certain measures advocated by the political parties through any tacit acceptance of party platforms. There are no longer great questions calling for important party divisions. While the political parties possess general platforms or programmes, as they are called, they cover matters of common interest—centralization or federalization, minority representation, methods of elections, administrative matters, etc. Neither does an adverse vote by the people upon a measure proposed by an assembly cause any change, for, after defeating a law which may have been accepted almost unanimously in the assembly, the people at the next election vote for and reelect the same representatives. There are no ministerial crises, and the councils do not resign if their suggestions are not accepted. Membership in the Swiss Federal Council is virtually a life position, although its members are elected every three years by congress. Mr. Zemp, the councilor representing the conservative Catholic element has just resigned, and while this party is in the minority, his successor is from the same canton, Lucerne, and a member of the same political party.

## POWERS OF THE FEDERAL AUTHORITIES.

(Constitutional provisions.)

### I. FEDERAL ASSEMBLY (ASSEMBLÉE FÉDÉRALE; BUNDESVERSAMMLUNG).

ART. 71. With the reservation of the rights of the people and of the Cantons (Articles 89 and 121), the supreme authority of the confederation is exercised by the Federal Assembly, which consists of two sections or councils, to wit:

(a) The National Council.

(b) The Council of States.

A. *National Council (Conseil National; Nationalrath).*



ART. 72. The National Council is composed of representatives of the Swiss people, chosen in the ratio of one member for each 20,000 persons of the total population. Fractions of upward of 10,000 persons are reckoned as 20,000.

Every Canton, and in the divided Cantons every half Canton, chooses at least one representative.

ART. 73. The elections for the National Council are direct. They are held in federal electoral districts, which in no case shall be formed out of parts of different Cantons.

ART. 74. Every Swiss who has completed 20 years of age, and who in addition is not excluded from the rights of a voter by the legislation of the Canton in which he is domiciled, has the right to vote in elections and popular votes.

Nevertheless, the confederation by law may establish uniform regulations for the exercise of such right.

ART. 75. Every lay Swiss citizen who has the right to vote is eligible for membership in the National Council.

ART. 76. The National Council is chosen for three years and entirely renewed at each general election.

ART. 77. Representatives to the Council of States, members of the Federal Council, and officials appointed by that council shall not at the same time be members of the National Council.

ART. 78. The National Council chooses out of its own number, for each regular or extraordinary session, a president and a vice-president.

A member who has held the office of president during a regular session is ineligible either as president or as vice-president at the next regular session.

The same member may not be vice-president during two consecutive regular sessions.

When the votes are equally divided the president has a casting vote; in elections he votes in the same manner as other members.

ART. 79. The members of the National Council receive a compensation out of the federal treasury.

#### *B. Council of States (Conseil des Etats; Ständerath).*

ART. 80. The Council of States consists of 44 representatives of the cantons. Each canton appoints two representatives; in the divided cantons each half state chooses one.

ART. 81. The members of the National Council and those of the Federal Council may not be representatives in the Council of States.

ART. 82. The Council of States chooses out of its own number for each regular or extraordinary session a president and a vice-president.

Neither the president nor the vice-president can be chosen from among the representatives of the canton from which the president has been chosen for the regular session next preceding.

Representatives of the same canton can not occupy the position of vice-president during two consecutive regular sessions.

When the votes are equally divided the president has a casting vote; in elections he votes in the same manner as the other members.

ART. 83. Representatives in the Council of States receive a compensation from the cantons.

#### *C. Powers of the Federal Assembly.*

ART. 84. The National Council and the Council of States consider all the subjects which the present constitution places within the competence of the confederation and which are not assigned to any other federal authority.

ART. 85. The subjects within the competence of the two councils are particularly the following:

1. Laws on the organization of and election of federal authorities.
  2. Laws and ordinances on subjects which by the constitution are placed within the federal competence.
  3. The salary and compensation of members of the federal governing bodies and of the federal chancery; the creation of federal offices and the determination of salaries therefor.
  4. The election of the Federal Council, of the federal court, and of the chancellor, and also of the commander in chief of the federal army.
- The confederation may by law assign to the Federal Assembly other powers of election or confirmation.
5. Alliances and treaties with foreign powers, and also the approval of treaties made by the cantons between themselves or with foreign powers; nevertheless the

treaties made by the cantons shall be brought before the Federal Assembly only in case the Federal Council or another canton protests.

6. Measures for external safety and also for the maintenance of the independence and neutrality of Switzerland; the declaration of war and the conclusion of peace.

7. The guaranty of the constitution and of the territory of the cantons; intervention in consequence of such guaranty; measures for the internal safety of Switzerland, for the maintenance of peace and order; amnesty and pardon.

8. Measures for the preservation of the constitution, for carrying out the guaranty of the cantonal constitutions, and for fulfilling federal obligations.

9. The power of controlling the federal army.

10. The determination of the annual budget, the audit of public accounts, and federal ordinances authorizing loans.

11. The superintendence of federal administration and of federal courts.

12. Protests against the decisions of the federal council upon administrative conflicts. (Art. 113.)

13. Conflicts of jurisdiction between federal authorities.

14. The amendment of the federal constitution.

ART. 86. The two councils assemble annually in regular session upon a day to be fixed by the standing orders.

They are convened in extra session by the Federal Council upon the request either of one-fourth of the members of the National Council, or of five cantons.

ART. 87. In either council a quorum is a majority of the total number of its members.

ART. 88. In the National Council and in the Council of States a majority of those voting is required.

ART. 89. Federal laws, enactments, and resolutions shall be passed only by the agreement of the two councils.

Federal laws shall be submitted for acceptance or rejection by the people, if the demand is made by 30,000 voters or by eight cantons. The same principle applies to federal resolutions which have a general application, and which are not of an urgent nature.

ART. 90. The confederation shall by law establish the forms and intervals to be observed in popular votes.

ART. 91. Members of either council vote without instructions.

ART. 92. Each council takes action separately. But, in the case of the elections specified in article 85, section 4, of pardons, or of deciding a conflict of jurisdiction (art. 85, sec. 13), the two councils meet in joint session, under the direction of the President of the National Council, and a decision is made by the majority of the members of both councils present and voting.

ART. 93. Measures may originate in either council, and may be introduced by any of their members.

The Cantons may by correspondence exercise the same right.

ART. 94. As a rule, the sittings of the councils are public.

## II. FEDERAL COUNCIL (CONSEIL FÉDÉRAL; BUNDESRATH).

ART. 95. The supreme direction and executive authority of the confederation is exercised by a Federal Council composed of seven members.

ART. 96. The members of the Federal Council are chosen for three years by the councils in joint session from among all the Swiss citizens eligible to the National Council. But not more than one member of the Federal Council shall be chosen from the same Canton.

The Federal Council is chosen anew after each election of the National Council.

Vacancies which occur in the course of the three years are filled at the first ensuing session of the Federal Assembly, for the remainder of the term of office.

ART. 97. The members of the Federal Council shall not, during their term of office, occupy any other office, either in the service of the confederation or in a Canton, or follow any other pursuit or exercise a profession.

ART. 98. The Federal Council is presided over by the President of the confederation. There is a Vice-President.

The President of the confederation and the Vice-President of the Federal Council are chosen for one year by the Federal Assembly from among the members of the council.

The retiring President shall not be chosen as President or Vice-President for the year ensuing.

The same member shall not hold the office of Vice-President during two consecutive years.

ART. 99. The president of the confederation and the other members of the Federal Council receive an annual salary from the federal treasury.

ART. 100. A quorum of the Federal Council consists of four members.

ART. 101. The members of the Federal Council have the right to speak but not to vote in either house of the Federal Assembly, and also the right to make motions on the subject under consideration.

ART. 102. The powers and the duties of the Federal Council, within the limits of this constitution, are particularly the following:

1. It conducts federal affairs, conformably to the laws and resolutions of the confederation.

2. It takes care that the constitution, federal laws, and ordinances, and also the provisions of federal concordats, be observed; upon its own initiative or upon complaint, it takes measures necessary to cause these instruments to be observed, unless the consideration of redress be among the subjects which should be brought before the federal court, according to article 113.

3. It takes care that the guaranty of the cantonal constitutions be observed.

4. It introduces bills or resolutions into the Federal Assembly, and gives its opinion upon the proposals submitted to it by the councils or the Cantons.

5. It executes the laws and resolutions of the confederation and the judgments of the federal court, and also the compromises or decisions in arbitration upon dispute between Cantons.

6. It makes those appointments which are not assigned to the Federal Assembly, federal court, or other authority.

7. It examines the treaties made by Cantons with each other, or with foreign powers, and approves them, if proper. (Art. 85, sec. 5.)

8. It watches over the external interests of the confederation, particularly the maintenance of its international relations, and is, in general, intrusted with foreign relations.

9. It watches over the external safety of Switzerland, over the maintenance of independence and neutrality.

10. It watches over the internal safety of the confederation, over the maintenance of peace and order.

11. In cases of urgency, and when the Federal Assembly is not in session, the Federal Council has power to raise the necessary troops and to employ them, with the reservation that it shall immediately summon the councils if the number of troops exceeds 2,000 men, or if they remain in arms more than three weeks.

12. It administers the military establishment of the confederation, and all other branches of administration committed to the confederation.

13. It examines such laws and ordinances of the Cantons as must be submitted for its approval; it exercises supervision over such departments of the cantonal administration as are placed under its control.

14. It administers the finances of the confederation, introduces the budget, and submits accounts of receipts and expenses.

15. It supervises the conduct of all the officials and employees of the federal administration.

16. It submits to the Federal Assembly at each regular session an account of its administration and a report of the condition of the confederation, internal as well as external, and calls attention to the measures which it deems desirable for the promotion of the general welfare.

It also makes special reports when the Federal Assembly or either council requires it.

ART. 103. The business of the Federal Council is distributed by departments among its members. This distribution has the purpose only of facilitating the examination and despatch of business; decisions emanate from the Federal Council as a single authority.

ART. 104. The Federal Council and its departments have power to call in experts on special subjects.

### III. FEDERAL CHANCERY (CHANCELLERIE FÉFÉRALE: BUNDESKANZLEI).

ART. 105. A federal chancery, at the head of which is placed the chancellor of the confederation, conducts the secretary's business for the Federal Assembly and the Federal Council.

The chancellor is chosen by the Federal Assembly for the term of three years, at the same time as the Federal Council.

The chancery is under the special supervision of the Federal Council.

A federal law shall provide for the organization of the chancery.

### IV. FEDERAL COURT (TRIBUNAL FÉDÉRAL: BUNDESGERICHT).

ART. 106. There shall be a federal court for the administration of justice in federal concerns.

There shall be a jury for criminal cases. (Art. 112.)



ART. 107. The members and alternates of the federal court shall be chosen by the Federal Assembly, which shall take care that all three national languages are represented therein.

A law shall establish the organization of the federal court and of its sections, the number of judges and alternates, their term of office, and their salary.

ART. 108. Any Swiss citizen eligible to the National Council may be chosen to the federal court.

The members of the Federal Assembly and of the Federal Council, and officials appointed by those authorities, shall not at the same time belong to the federal court.

The members of the federal court shall not, during their term of office, occupy any other office, either in the service of the confederation or in a canton, nor engage in any other pursuit, nor practice a profession.

ART. 109. The federal court organizes its own chancery and appoints the officials thereof.

ART. 110. The federal court has jurisdiction in civil suits:

1. Between the confederation and the cantons.
2. Between the confederation on one part and corporations or individuals on the other part, when such corporations or individuals are plaintiffs, and when the amount involved is of a degree of importance to be determined by federal legislation.
3. Between cantons.
4. Between cantons on one part and corporations or individuals on the other part, when one of the parties demands it, and the amount involved is of a degree of importance to be determined by federal legislation.

It further has jurisdiction in suits concerning the status of persons not subjects of any government (*Heimathlosen*), and the conflicts which arise between communes of different cantons respecting the right of local citizenship. (*Droit de cité.*)

ART. 111. The federal court is bound to give judgment in other cases when both parties agree to abide by its decision, and when the amount involved is of a degree of importance to be determined by federal legislation.

ART. 112. The federal court, assisted by a jury to decide upon questions of fact, has criminal jurisdiction in—

1. Cases of high treason against the confederation, of rebellion or violence against federal authorities.
2. Crimes and misdemeanors against the law of nations.
3. Political crimes and misdemeanors which are the cause or result of disturbances which occasion armed federal intervention.
4. Cases against officials appointed by a federal authority where such authority delegates them to the federal court.

ART. 113. The federal court further has jurisdiction—

1. Over conflicts of jurisdiction between federal authorities on one part and cantonal authorities on the other part.
2. Disputes between Cantons when such disputes are upon questions of public law.
3. Complaints of violation of the constitutional rights of citizens, and complaints of individuals for the violation of concordats or treaties.

Conflicts of administrative jurisdiction are reserved, and are to be settled in a manner prescribed by federal legislation.

In all the forementioned cases the federal court shall apply the laws passed by the Federal Assembly and those resolutions of the assembly which have a general import. It shall in like manner conform to treaties which shall have been ratified by the Federal Assembly.

ART. 114. Besides the cases specified in articles 110, 112, and 113 the confederation may by law place other matters within the jurisdiction of the federal court; in particular, it may give to that court powers intended to insure the uniform application of the laws provided for in article 64.

## SYNOPSIS—FORMS OF REFERENDUM AND INITIATIVE PRACTICED IN SWITZERLAND.

### REFERENDUM.

*In the confederation.*—Obligatory referendum, covering constitutional amendments, whether originating in Congress or demanded through the initiative of 50,000 voters.

Optional referendum, covering (1) laws and (2) decrees of a general nature not designated as urgent, upon demand of 30,000 voters.

*In the Cantons.*—Obligatory referendum covering all cantonal laws (excepting financial measures up to a certain amount) in the fol-



lowing Cantons: Zürich, Berne, Schwyz, Solothurn, Rural-Basel, Graubünden, Aargau, Thurgau, and Wallis.

Optional referendum upon demand of a number of voters varying in number in the different Cantons in the following: Luzern, Zug, Basel-City, Schaffhausen, St. Gallen, Tessin, Vaud, Neuchatel, Geneva.

The Landesgemeinde Cantons are: Uri, Obwalden, Nidwalden, Glarus, Appenzell interior, and Appenzell exterior.

Obligatory referendum covering cantonal constitutional amendments is obligatory in all Cantons and is demanded by the federal constitution.

#### INITIATIVE.

*In the confederation.*—Covers constitutional amendments only. (50,000 signatures.)

*In the Cantons.*—Covering cantonal constitutional amendments in all the Cantons.

Covering the enactment, revocation, or amendment of cantonal laws and general decrees in all Cantons excepting Fribourg.

Names of the Cantons in German and French are:

German.	French.
Bern.....	Berne.
Luzern.....	Lucerne.
Basel.....	Bâle.
Graubünden.....	Grisons.
Tessin.....	Ticino (Italian).
Waadt.....	Vaud.
Wallis.....	Valais.
Neuenburg.....	Neuchâtel.
Genf.....	Genève.

The other cantonal names are alike in both languages.

#### Statistical, 1907.

Cantons.	Area in square miles.	Popula- tion.	Number of voters.	Number of signa- tures necessary for statutory initiative.
Zürich.....	665	476,020	105,637	5,000
Bern.....	2,660	620,205	138,862	12,000
Luzern.....	580	152,641	38,069	4,000
Uri.....	415	21,043	5,012	Landesgemeinde.
Schwyz.....	351	58,170	13,777	2,000
Obwalden.....	295	15,379	4,110	Landesgemeinde.
Unterwalden.....		13,360	3,185	Landesgemeinde.
Glarus.....	267	31,539	8,295	Landesgemeinde.
Zug.....	92	26,225	6,610	800
Fribourg.....	644	132,777	32,300	None.
Solothurn.....	303	109,070	25,997	2,000
Basel City.....	177	129,898	21,247	1,000
Rural Basel.....		72,092	15,029	1,500
Schaffhausen.....	116	43,561	8,968	1,000
Appenzell, exterior.....	162	55,926	14,225	Landesgemeinde.
Appenzell, interior.....		13,835	3,172	Landesgemeinde.
St. Gallen.....	780	262,418	62,572	4,000
Graubünden.....	2,765	108,951	25,113	3,000
Aargau.....	542	213,582	48,103	5,000
Thurgau.....	382	117,908	28,305	2,500
Tessin.....	1,095	145,162	40,255	5,000
Vaud.....	1,245	303,139	70,957	6,000
Valais.....	2,026	118,856	29,834	4,000
Neuchatel.....	312	134,100	31,847	3,000
Geneva.....	109	149,399	26,220	2,500
Total.....	15,973	3,525,256	807,701	.....

*Religion.*—There are about 500,000 more Protestants than Roman Catholics in Switzerland. The Cantons in which Catholicism predominates are Luzern, Uri, Schwyz, Obwalden, Unterwalden, Zug, Fribourg, Solothurn, interior Appenzell, St. Gallen, Tessin, and Wallis. In Geneva the religions are equally divided. The other Cantons are Protestant.

#### HISTORICAL DEVELOPMENT.

The modern referendum, as found in Switzerland, is distinguished from the ancient referendum by the fact that through its use the decision of individuals is given, whereas formerly only the districts and guilds as a whole were called upon to give their opinions to certain questions. Even before the modern referendum found a fixed place in Switzerland it was used in Massachusetts as early as 1775. In France, in the year 1793, the constitution was accepted by a plebiscite when 1,801,918 voted in favor and 11,610 against it, but these votes were cast only in such parts of the country as were not in revolt, the opponents undoubtedly fearing to show their opposition.

The first instance of the modern referendum in Switzerland occurred in 1802, and concerned one of the many constitutional projects of the Helvetic period. During four days all citizens over 20 years of age were permitted to enter their decision with the secretaries of the communes. Later in the individual cantons their constitutions were accepted by the referendum, the first being Thurgau in 1831. Many of these cantonal constitutions at this time contained an article similar to that in early state constitutions in the United States to the effect that it must remain in force for a certain number of years, after which the question of revision must be decided by the people, and that previous to the expiration of that time no revision could be made. In St. Gallen, where its duration was fixed for at least six years, the people were asked in 1837 whether they desired a revision, but none was demanded. At this time we find that the number of nonvoters was not considered, whereas previously they were counted as being in favor.

Early in the thirties many of the cantonal representative assemblies commenced to propose laws, which right was formerly exercised only by the cantonal councils or authorities in power. This is undoubtedly the first appearance of the form of initiative whereby an assembly suggests laws which has developed since that time into the present method of presentation of bills by individual members.

The year 1848 commenced an era of utmost importance to Switzerland, for now following the Sonderbund war, the modern Swiss constitution was accepted. Although the referendum had been in force in the Cantons for some years, the federal constitution of 1848 in being presented for popular vote marks the beginning of the referendum covering the entire confederation. It is interesting to note that in several Cantons the vote of individuals is not given; Fribourg's vote was given by its assembly, and the vote of Tessin was not considered because it stipulated its acceptance only with certain reservations. The number of individual votes in its favor, 145,584, against 54,320 represented, however, the majority of the Swiss citizens at that time as well as the majority of the Cantons.

By the constitution of 1848 those Cantons which did not permit the use of the referendum with respect to their own constitutions were

obliged to introduce it, for the confederation guarantees the rights of the Cantons and the inviolability of their constitutions only if they have been accepted by the people. Thus the obligatory referendum was introduced into both the confederation and the Cantons, but as yet referred only to constitutions. At the same time the constitutional initiative was introduced which gave 50,000 citizens the right to demand a total revision of the federal constitution. The Cantons, too, were forced to permit its use, for not only does the federal constitution guarantee the cantonal constitution as above mentioned, but also requires that they may be revised upon demand of the majority of the citizens. The Cantons, however, do not hold to the maximum of a clear majority, but have set the number of signatures necessary at figures ranging from 6 to 12 per cent of the total voting strength.

The referendum covering statutes first finds its place in several of the Cantons commencing with St. Gallen in 1831, which has been styled a concession to democracy by the adherents of a purely representative government. St. Gallen was followed by rural Basel in 1832, by Wallis in 1839, and by Lucerne in 1841. The St. Gallen referendum was in the form of the old-time "veto," whereby the number of nonvoters were counted as being in favor of a measure, and its defeat could only follow when a majority of the total voting strength (not votes cast) was opposed. In rural Basel unless two-thirds of the citizens had rejected a law within two weeks of its publication it was considered as having been accepted. Here the opponents were obliged to formulate the reasons for their rejection.

In the constitution of the Canton of Vaud in 1845 the statutory initiative first appeared. Laws intended for acceptance by the cantonal assembly were permitted to be broached by 8,000 "active" citizens. Other Cantons followed. In 1861 the antiquated veto method in St. Gallen was somewhat facilitated. This change provided that all laws would be considered as having been accepted unless at least 10,000 citizens voted upon the proposal within forty-five days. If, however, within twenty-one days 10,000 votes had been cast for its rejection, all the communes would be called upon to vote upon the measure, and a majority of the entire voting strength would decide.

A new period commenced in 1863 and lasted until the acceptance of the revised federal constitution in 1874. In the first year rural Basel by a revised constitution provided that twice yearly an obligatory referendum was to be held covering general laws and treaties, and at the same time the statutory initiative was introduced. Thurgau, Zürich, Berne, Solothurn, and Lucerne followed in 1869 and Aargau in 1870 with the constitutional initiative for amendments; Berne with the obligatory referendum; Lucerne with an obligatory referendum, provided 4,000 citizens called out the law; and the others provided in place of the obligatory referendum a more or less extended statutory initiative. These cantonal changes were preliminary to the revision of the federal constitution in 1872 and 1874.

The projected constitution of 1872 contained the initiative for the amendment, revocation, or enactment of various laws and ordinances, but the entire project was defeated by popular vote. In the next projected constitution, that of 1874, neither the statutory initiative nor the constitutional initiative for partial revision finds



place. In the period between 1874 and the present time both referendum and initiative rights have been widely extended in the Cantons. In all of them exists the rights of partial revision of their constitution, as demanded by the constitution of the Confederation. With the exception of Fribourg the statutory initiative is found in all Cantons. The old form of the "veto" has given way to the simpler modern referendum, and since 1890 St. Gallen possesses an optional referendum which may be demanded by 4,000 citizens. Zürich has restricted the referendum by placing the regulation of salaries of officials in the hands of the executive council. Berne, since 1880, no longer asks the opinion of its citizens concerning the budget, as in 1877 the usual four-yearly budget was not accepted by the people and the old "financial plan" of previous years had to be used. This resulted in the effect mentioned. Direct taxes, however, may not be imposed without the consent of the people. It may be mentioned here that Berne has been trying for years to procure an equitable tax law, but the agricultural population being in the majority, and as this class of citizens pays virtually no income tax and only 50 per cent of the usual taxes upon property for agricultural purposes, they hold the balance of power and will not give it up. Tax rates in Switzerland are very high. In Berne the rate is  $6\frac{3}{4}$  per cent on all incomes above \$120. There is also a tax upon real estate and a higher income tax than that mentioned upon annuities, dividends, interest, etc.

The use of the initiative was further extended in 1891 by the acceptance in the federal constitution of an article whereby a partial revision may be demanded by 50,000 voters or 8 Cantons.

#### FEDERAL INITIATIVE LAW.

In conformity with article 122 of the federal constitution and the recommendation of the Federal Council in its message of July 22, 1891, the Swiss Federal Assembly enacts:

ARTICLE 1. A revision of the federal constitution, as a whole or in part, can at any time be demanded by way of the initiative.

ART. 2. If anyone desires to use this franchise, an application signed by at least 50,000 voters, who must be Swiss citizens, is to be addressed in writing to the Federal Council, who will submit the same to the Federal Assembly. This application must contain the subject of the initiative.

ART. 3. Any citizen wishing to make such application must sign it personally. Anyone signing another's name will be indicted for forgery and punished accordingly.

ART. 4. Each list containing the signatures must name the Canton and the community of which the applicants are residents. To be valid, it must also specify: (1) The text of the initiative; (2) the text of article 3 of this law; (3) a certificate of the city authorities, properly dated, showing the applicants to be entitled to vote on federal laws and that they are qualified electors in their communities. No fee shall be collected for this certificate.

ART. 5. Having received the revision demand, the Federal Council will canvass the signatures and determine the numbers entitled to vote. Debarred from voting will be: (1) Those whose signatures have not been certified to within the period of six months, dating retrogressively from the day on which the revision demand is received by the Federal Council; (2) the signatures contained in an invalid list (see article 4); (3) those signatures the registration of which is missing, incomplete, or incorrect. Any signatures shown to be in the same handwriting are classed as invalid and will not be counted. The Federal Council will issue reports in its official organ showing the result of the investigation, and will submit the same to the Federal Assembly at its first meeting, together with all other acts relating thereto.

ART. 6. If a demand for revision, or an initiative requiring a total revision of the constitution is found valid, the question whether this revision shall take effect must be determined by the vote of the whole Swiss people. If the majority is in favor of

revision, both the state council and the National Council must be reelected, and the new incoming councils must proceed to revise the constitution in toto.

ART. 7. If the initiative demands the repeal, abolition, or change of certain articles of the constitution, and if the same is framed in the form of a general bill, both councils will have to decide within one year whether they agree with the demand or not. If they agree, they will provide for the necessary legislation in accordance with article 121 of the constitution. If they reject the demand, or can not come to a decision within the stated period, the Federal Council will then call a general election. If the majority of Swiss citizens vote in favor of the demand, the Federal Assembly shall, without delay, take the matter in hand and make the required revision, after which the revised articles will be again submitted to the vote of the whole Swiss electorate.

ART. 8. If, on the other hand, the demand is in the form of an elaborated project, the two councils shall decide, within a period not exceeding one year, whether they agree with this project or not.

ART. 9. If the two councils can not come to a unanimous conclusion regarding said project, it will be subjected to the vote of the people and the vote of the Cantons, as also is the case if the Federal Assembly concludes to agree to the project.

ART. 10. If the Federal Assembly decides not to agree to the demand, the people will vote on the question. The Federal Assembly has a right, however, to recommend to the people the rejection of the project, or propose a new one prepared by the Assembly.

ART. 11. In case the Federal Assembly proposes a special elaborated project, in opposition to the demand for revision, the people will have to vote on the two questions, as follows: (1) Do you accept the project for revision demanded by the initiative? or (2) Do you accept the project of the Federal Assembly?

ART. 12. The blank and invalid ballots are not counted in determining the result of the vote. Ballots which answer one question with "yes," and the other with "no," or both questions with "no," are valid. Ballots which answer both questions with "yes" are void.

ART. 13. The project which is accepted by the majority of the voters and the majority of the Cantons will become a law.

ART. 14. The records of the vote must contain the number of residents in the community entitled to vote, the number of ballots, the number of invalid votes, and, finally, the number of yeas and nays for each of the questions.

ART. 15. If, on the same article of the constitution, several demands for revision have been made, they must be voted on separately in accordance with the date of their filing.

ART. 16. The prescriptions of the federal law on June 17, 1874, relative to federal election laws and regulations, must be followed.

ART. 17. The federal law of December 5, 1867, relative to the constitutional revision demand is hereby repealed, as well as the Federal Council's prescriptions dated May 2, 1879.

ART. 18. The Federal Council shall publish this law and the date of its enactment in accordance with the prescriptions of the federal law of June 17, 1874, relative to federal election laws and decisions of the Federal Council.

The Federal Council declares that the above federal law, published on the 10th of February, 1892, is a part of the Swiss federal laws, and will enter force on May 15, 1892.

#### FEDERAL INITIATIVE MEASURES.

Since the introduction of the constitutional initiative, in 1891, six measures have been presented for popular vote based upon the initiative of at least 50,000 voters, in accordance with articles 118 to 123 of the federal constitution. The initiative petition may be offered either in the form of a general request or in the form of a completed bill, and may provide for the entire or partial revision of the constitution. Such an amendment is declared in force when it has been adopted by both the majority of the Swiss citizens who take part in the vote and by a majority of the Cantons. The result of the popular vote in each Canton is considered to be the vote of that Canton. Of the six constitutional initiatives since 1891, five were defeated. They were as follows:

First. During the first half of the nineteenth century there were about 9,000 Jews in Switzerland. The slaughtering of cattle accord-

ing to the Jewish ritual was prohibited in the Canton Aargau, where many of the Jews resided, but in 1855 permission was given to the Jewish butchers to slaughter cattle for food by cutting the throat and bleeding. This permission, however, was not accorded butchers of other faiths, and as the number of Jews increased and spread from the two communities in the Canton Aargau, where they had originally resided, to the other towns, protest was raised against the difference in treatment between the Jewish and Christian butchers. This resulted in the prohibition of the ritual method of slaughter in that Canton in 1890. A similar course of events occurred in the Canton of Berne. The Jews then appealed to the Federal Council, and this body, after convening an expert commission, held that the ritual manner of slaughtering was of a religious nature and could not be forbidden. The new federal constitutional initiative provision, which had not been used since its introduction, two years before, was now brought into play, and the Swiss Association for the Prevention of Cruelty to Animals commenced the work of securing the necessary signatures to an initiative providing for an amendment of the federal constitution in the following terms:

ART. 25 bis. The killing of animals without stunning before the drawing of blood is forbidden for every method of slaughter and for every species of animals without exception.

On October 17, 1892, 87,268 signatures had been obtained, of which 4,109 proved to be invalid. Berne and Aargau together furnished 47,882 signatures. The proposed amendment went before Congress in June, 1893. There was a lengthy discussion. The proposal was styled as one of sentiment and class hatred. Congress recommended its rejection by the people. The press declared that the Swiss federal constitution could not be turned into a slaughterhouse ordinance. In some Cantons, viz, Geneva, Lucerne, Tessin, both Appenzells, Obwalden, Unterwalden, and Glarus, no signatures whatever had been obtained. The popular vote showed a participation of 318,628 of a total voting strength of 668,913, representing 47.6 per cent. Of the votes cast, 191,527 were in favor and 127,101 were opposed. Ten Cantons and 3 half Cantons accepted the amendment and 9 Cantons and 3 half Cantons rejected it. In some Cantons the participation was very small, 21 and 23 per cent in Schwyz and Zug, 24 per cent in Tessin and Lucerne, while in Aargau, where the agitation was strong, 82.2 per cent of the voters cast ballots. The amendment was therefore accepted, and orthodox Jews in Switzerland now import their "kosher" meat from Alsace. The plebiscite was held on August 20, 1893.

Second. In 1894 an initiative measure by which the confederation was to guarantee adequate work of a suitable nature to every citizen was rejected by a vote of 308,289 against 75,880, a total of 384,169 votes out of a voting strength of 680,731, representing 56.4 per cent. In no Canton was a majority for this initiative polled. The measure had been presented by the socialists, who had formulated a complete bill. Congress recommended its rejection.

Third. The next initiative proposed turning over to the Cantons the sum of 40 cents per capita, to be paid from the customs tariff receipts. It was declared at that time by its proponents that the Government had been wasteful and had established new offices for



various purposes. Many considered that with the increased receipts of the Government increased and unnecessary expenditure would follow. It should be mentioned that the Federal Government has the right to demand financial aid from the Cantons in case of necessity, the amount being fixed by a per capita tax which varies in the Cantons according to their importance and resources. This power has never been put into effect. The adherents of the initiative believed that the reverse also should be permitted, and that in times of financial prosperity the Federal Government should turn over to the Cantons a certain surplus. Generally speaking, the Cantons were in financial difficulties at this time, and any added income would have been most acceptable. It is not quite clear whether the rates of taxation in the individual Cantons would have been reduced by this method. Federalists, the Catholic party, and the socialists were in favor of its passage, and the plebiscite was held after considerable agitation. From a total voting strength of 690,250, ballots to the number of 496,101 were cast, of which 350,639 opposed and 145,462 supported the measure. Twelve Cantons and 3 half Cantons rejected and 7 Cantons and 3 half Cantons accepted. The participation of voters, 71.9 per cent, is among the largest in the history of federal referenda. Other high percentages were brought out—upon the acceptance of the railroad purchase act, 79.1 per cent; the customs tariff act of 1903, 72.6 per cent; and the military organization law of 1907, 74 per cent. These last three were not initiative measures, but were called out by the optional referendum. This initiative project was styled the "Plundering law," which is as near to the term "Graft measure" as the German language can approach. This name still stands in a Swiss statistical publication in parentheses after the correct title of the law, which was the "Tariff initiative," and the epithet undoubtedly aided in encompassing its rejection. The Government and its private opponents appealed to the patriotism of the people to cause its defeat.

Fourth and Fifth. Six years passed without any initiative being proposed until 1900 when the Social Democrats introduced a dual measure styled the "Double initiative." These two constitutional amendments were:

(1) Proportional election of the National Council (House of Representatives), each canton to be counted as an electoral district. Two years previously a representative from Basel had introduced a similar bill, which, however, was never considered by the House.

(2) The direct election of the Federal Executive council instead of by Congress, and the increase of their number from seven to nine, of which two must be from French Switzerland and one only from any one Canton. This latter measure had been the subject of a bill in Congress the previous winter and had been rejected.

The opponents of direct election of the Federal Executive council believe that its introduction would furnish grounds for danger for the reason that while the cantonal executive councils are elected by popular vote the citizens can form a definite opinion of the value of a candidate in the limited confines of the Canton, whereas this would be practically impossible in the election of a board of seven members for the entire confederation. The Federal Council, too, is of vastly greater importance than the similar executive bodies in the Cantons. In the confederation the influences of party and press



is to be feared. The United States was mentioned as a speaking example.

The Social Democrats were supported by the Catholic party and the Protestant conservatives. Congress recommended rejection of both projects, and this occurred on November 4, 1900, when 244,507 against 169,018 defeated the first measure, and 270,502 against 145,936 defeated the second measure. The total participation was 413,588, or 55.3 per cent, for the first, and 416,438, or 55.7 per cent of the voting strength of 747,582, for the second measure.

Sixth. The Swiss House of Representatives is elected in the proportion of one member for each 20,000 inhabitants. In 1903 an initiative demand was made by 57,379 voters to amend this constitutional provision by inserting the words "Swiss citizens" instead of "inhabitants." The acceptance of this amendment would have reduced the entire number of national representatives by 20, and the cities of Zürich, Basel, Geneva, and St. Gall would have lost in representation in a larger degree than the rural districts, since Zürich, Basel, and Geneva form almost entirely the population of the Cantons of the same names. At this time the population of Switzerland was 3,315,453, of which number 383,424 were foreigners. The larger number of foreigners were in the following Cantons:

Cantons.	Total population.	Foreigners.
Zürich.....	431,000	70,000
Basel City.....	112,000	42,781
St. Gallen.....	250,300	28,500
Geneva.....	132,600	52,600
Berne.....	589,000	24,400

It is said that the underlying motive of the proponents of this initiative was fear of foreigners. In most of the Cantons the cantonal assemblies are elected in proportion to the total number of inhabitants, while in several the number of voters forms the basis of representation, and in Zürich the local council is elected on the basis of Swiss population. Congress recommended rejection of the initiative, and it was defeated by 295,075 against 95,121 votes, a total of 390,196 participants out of a voting strength of 767,542, or 50.8 per cent.

Aside from these six initiative proposals for constitutional amendments there have been 30 amendments placed before the people under the obligatory referendum, covering constitutional revisions which originated in Congress, 15 of which were rejected.

*The Absinthe Initiative.*—This will be voted upon on July 5, 1908, and will be the seventh popular initiative proposal for constitutional amendment. It had for its impetus a horrible family tragedy which occurred in the Canton of Vaud. The sale of absinthe is at present prohibited in the two Cantons, Vaud and Geneva, both in the French part of Switzerland. In Vaud a cantonal initiative was invoked which demanded the revocation of this prohibitory legislation, but it was defeated in 1906 by 22,733 votes against 15,816 out of a total voting strength of 70,957. At the same time an appeal was made to the supreme court to revoke the law on the grounds of its infringe-

ment upon the constitutionally guaranteed rights of the freedom of trade and industry, but the court declared it was incompetent to decide.

An initiative has now been signed by 167,814 citizens calling for the prohibition of the manufacture, importation, or sale of absinthe in the entire confederation. Before placing this question before Congress the Federal Government obtained the opinions of all the Cantons as well as a detailed report from the federal alcohol monopoly administration. The use of absinthe is not common throughout Switzerland, but is confined to some of the French Cantons, two of which, as above mentioned, forbid its sale. It is the opinion of the council that this is a matter that should be decided by the individual Cantons, and it does not believe that the inhabitants of the Cantons where absinthe is not used should decide this question for their neighbors. The Federal Council and many members of Congress have recommended the rejection of the initiative. Switzerland is not confronted with a general "saloon problem," but this project is more or less based upon economics and is decidedly local in its application. Cafés, restaurants, and beer gardens exist everywhere throughout Switzerland. There is no "local option," although its introduction has been advocated as a remedy for just such problems. It must be explained, however, that these establishments can by no means be compared with the ordinary American saloon. Not only are alcoholic drinks obtainable, but good food, coffee, and soft drinks are sold, newspapers and magazines are on file; they are patronized by men and their families and students congregate there. There are, of course, many small cafés that have a bad reputation which the average citizen would not think of entering, but the average café is looked upon as a sort of club and recreation place; business conferences are held there and officials up to the highest in the confederation frequent them. Since there are no congested districts, the saloon question as it exists in the United States is not present in Switzerland. It is interesting to note that the federal alcohol administration is not in favor of the absinthe initiative, which would ruin a flourishing industry in the Canton of Neuchâtel, which manufactures mainly for export, neither does it believe that the cause of prohibition would be furthered. Those who are addicted to the intemperate use of absinthe would drink something else, such as cheap brandy, kirschwasser, vermouth, etc., while the opportunity for smuggling and lawbreaking would increase.

#### CANTON BERNE INITIATIVE MEASURES.

First. In April, 1852, a few years after the acceptance of the Bernese constitution in 1846, at a time of general turmoil and disturbance following the war of the Sonderbund and the acceptance of the federal constitution in 1848, the first initiative in canton Berne was launched. Its object was to recall the entire cantonal assembly. The measure was defeated by 45,131 votes against 38,422. (In 1869 the referendum law was accepted by 32,000 against 22,000 votes out of an estimated voting strength of 102,000. The percentage voting was 57.7. This introduced the obligatory referendum in the canton, and since that time every law passed by the assembly has to be placed before popular vote.)

Second. A period of forty-three years passed before another initiative was invoked. Compulsory vaccination had been in force in the canton of Berne since the year 1849. Alarmed by the agitation of the antivaccinationists, 12,731 voters signed an initiative which demanded the abolition of the obligatory vaccination law. At the election following, on February 3, 1895, 27,468 voted in its favor and 24,600 against it, of a total voting strength of 118,449, representing a participation of 44.9 per cent. The initiative was therefore accepted, and obligatory vaccination was abolished.

The opinion of the cantonal assembly is shown by its message to the Bernese people a few weeks later, when it presented a law, which, although recognizing the abolition of obligatory vaccination, placed in the hands of the administrative board the authority for determining its use in hospitals, poorhouses, educational establishments, prisons, etc.

This proposal, however, did not meet with the approval of the people, and on May 5, 1895, it was rejected by the vote of 22,679 against 16,683 polled by 35.6 per cent of the voting population. This is an interesting illustration of an attempted corrective measure by the assembly intended to overcome what it considered a mistake on the part of the people. It may be mentioned here that Switzerland, as a whole, possesses no compulsory vaccination law, but these Cantons have introduced it: Fribourg, Aargau, Solothurn, Tessin, Vaud, Neuchatel, Graubünden, Schwyz, Unterwalden, Zug, Rural Basel, and Appenzell.

Third. The next initiative in Berne followed in 1896 and covered three proposals for constitutional amendments. The supporters of these measures, numbering 16,950, who signed the petition, desired the following:

(1) Election of the cantonal assembly according to the proportional system.

(2) Election of the cantonal executive council (previously selected by the assembly) directly by the people, also by the proportional system.

(3) Election of the two federal senators by the people instead of by the assembly.

These three projects were presented for popular vote on May 3, 1896, and were unaccompanied by any message or counter proposal by the assembly. All three were defeated. The voting was as follows: 52.3 per cent of the voters of the canton cast ballots; the first measure was defeated by 32,118 against 29,093; the second by 32,787 against 27,903; and the third by 32,192 against 28,197.

Fourth. The subject of the fourth initiative, voted upon on October 25, 1896, after an initiative petition had been signed by 15,886 citizens, concerned the granting of subventions and premiums for the furtherance of cattle and horse breeding. As Berne is an agricultural Canton there was but little opposition to this proposal. The project was accepted by 33,126 against 20,606, a participation of 47.5 per cent of the voting population, which now had increased to 120,754.

Fifth. Not content with their defeat in 1896 of the proposal for the proportional election of the assembly, this measure was made the subject of a second attempt by its supporters in 1897, and was



voted upon on July 11 of the same year. The assembly made no counter proposal and presented no message. Here proportional election was again defeated, this time by 31,139 votes against 10,326, a total participation of 41,465 votes of a voting strength of 121,228, or 33 per cent.

Sixth. The next initiative occurred in 1900 after 24,921 signatures had been obtained. Salt is a monopoly of the Swiss Government, but it is left with the Cantons to determine the prices, manner of sale, etc. In some cases the revenue from this source is considerable, where the price is high, while in other Cantons it is sold at a small profit or at cost. Up to the year 1892 salt in the Canton Berne had cost 2 cents a pound, but at the close of that year the price had been reduced by decree to  $1\frac{1}{2}$  cents a pound. At the time of this initiative the Canton Berne was in financial difficulties, and, previous to the agitation for signatures, the assembly in 1900 had decreed that the price of salt was to be raised from  $1\frac{1}{2}$  cents a pound to 1.8 cents, an increase of three-tenths cent a pound. The added receipts by this proposed advance were expected to reach \$50,000 a year and the decree was to remain in force for three years. As Berne is an agricultural Canton, with the country population in the majority, and as in agricultural pursuits more salt is used in proportion than in the cities and towns, the assembly believe its decree would pass without question if it considered the agricultural interests. Accordingly \$20,000 of the expected increase in revenue from this source was to be paid into the benefit fund for farmers who had sustained loss through the ravages of the dreaded foot and mouth disease of their cattle. The people evidently did not desire an advance of three-tenths cent a pound for their salt; hence the initiative in the form of a formulated project demanding that the price as fixed by the decree of the assembly be set aside and the former figures ( $1\frac{1}{2}$  cents) be substituted. On April 29, 1900, 44,566 votes were cast in favor of the initiative and 17,336 against it. The participation was 49.7 per cent of the total voting strength of 125,693.

Seventh. The next initiative occurred in 1903, when 12,940 voters presented a formulated law concerning the establishment of normal schools. The normal school in the town of Hofwil was too small to accommodate a sufficient number of prospective teachers. The assembly desired that this school should be retained, but that to provide room for the lower classes the candidates should study two years there and then complete their education in the city of Berne, where every facility was offered. There was more or less of a conflict between the rural and town inhabitants. The initiative demanded that two normal schools be established, at Hofwil and in another village, both located in the country, and that the decree of the assembly concerning the higher classes in Berne should be revoked. The initiative was defeated by 39,514 votes against 25,264, 51.3 per cent voting out of a voting strength of 127,233.

Eighth. The next and last initiative was presented in 1906 and demanded the direct election of the cantonal executive council (9 members), instead of by the cantonal assembly. The former project for the election of the cantonal executive council that met defeat in 1896 had demanded that the councilors should be elected by the proportional system. The 1906 initiative contained no such provision, but desired to introduce the direct election by the people. It was

accepted by 38,331 against 10,936, representing 37.6 per cent of the cantonal voting strength of 132,648. It must be considered that the history of Berne is strictly conservative, and that even now in the peasant and even bourgeoisie classes a feeling of awe amounting almost to reverence is still felt for the ancient, formerly powerful families and their descendants, some now impoverished, who are styled 'patricians,' and who form a clique by themselves. The assembly would have required a two-thirds vote in order to pass such a constitutional amendment, and this measure originated in that body. This may aid in explaining why Berne has been so tardy in following the other Cantons with such a generally accepted popular constitutional right.

But at the election following the same councilors were reelected.

#### CITY OF BERNE INITIATIVE MEASURES.

There have been only two initiative petitions brought before the voters of the city of Berne.

First. In 1897 a request was made to consider the revocation of the local provision which provides for the proportional election of the city council. The initiative had the support of the city authorities, who addressed a message to the citizens pointing out the disadvantages and fallacies of proportional elections. Of 9,731 voters in the city of Berne 4,767 cast a ballot, and the initiative was defeated by a vote of 2,724 against 1,980. Only 500 more votes were cast in its favor than the number of signatures to the petition. The social democrats and allied smaller factions brought out a strong vote in opposition to the proposal, and the usual indifference was displayed by over half the voting population, who remained away from the polls.

Second. The Sunday closing laws in Berne provide that the bakeries, delicatessen stores, cigar stores, etc., should be open only for a few hours on Sundays within certain time limits. This law dates from 1907, but a few months afterwards an initiative petition signed by 2,018 citizens demanded that the paragraph relating to the closing of the bakeries should be abolished. The city council in a message recommended rejection of the initiative for the reason that such a short time had elapsed since the people had expressed their acquiescence with the entire law the council did not hold it necessary to make a change so soon. The bakers asked for the right to keep open the same as the confectioners. The council, however, was of the opinion that, as the confectioners were in possession of a license which allowed them to sell wines and liquors and permitted them to remain open all day Sunday, there was no parallel between the two cases. The confectioners are not permitted to deliver goods on Sunday, but this provision is easily overcome by the householders, who send their servants to fetch the goods. Out of 14,179 registered voters only 4,349 voted on this measure, and the initiative was rejected by 2,266 against 2,025. Only 7 more votes in its favor were polled than the number of signatures to the petition.

#### THE QUESTION OF CONSTITUTIONALITY.

The supreme court of the confederation is competent to pass upon the constitutionality of cantonal laws, but this competence does not extend to federal laws. Article 113 of the Swiss constitution, quoted

in this report, gives to the supreme court jurisdiction over complaints concerning violation of the constitutional rights of citizens, but it demands that the court apply without question all existing federal laws and treaties. Since the Federal Government embraces the cantonal governments, and guarantees their inviolability provided their constitutions have been accepted by the Federal Assembly and by the people of the individual Cantons, the supreme court has been considered competent to judge cantonal matters as above mentioned. Why, then, is this competency denied with regard to federal laws? According to the Swiss idea the people are sovereign, and they may call out for popular vote certain federal laws. When by the referendum a majority of the voters accepts any law it is taken to signify the will of the people. A majority of the people and of the Cantons may revise the constitution at any time. Hence, no court or judicial commission should be permitted to be placed in a position to decide upon questions already passed upon by the popular will.

This gives rise to a peculiar condition of affairs. A citizen, believing that his rights have been infringed upon by a cantonal law, may force the supreme court to decide its constitutionality, whereas the same citizen believing his rights to be infringed upon by a federal law has no such privilege. The Swiss seem to fear that should this competency be placed in the hands of the supreme court that this body would be elected for political reasons, and on account of the low salaries and short terms might result in grave danger to the confederation. On the other hand, it is claimed that federal laws already exist contrary to constitutional provisions, inasmuch as they infringe upon certain cantonal powers already determined by the constitution itself. A federal law can not be set aside by any judicial proceeding, and the Federal Assembly is the sole judge of its own actions. Let us take, for instance, the so-called "Plundering initiative," mentioned above. This demanded that the Federal Government pay to the Cantons the sum of 40 cents per capita out of the customs receipts. If instead of 40 cents the amount had been \$10, or \$400, or \$4,000, and the people had accepted it by the referendum, no judicial power would have been able to overthrow it, and the result would have been necessarily disastrous. Congress alone could have repealed the law, and as it was a constitutional amendment, the act providing for its revocation would also have had to be placed before the people. What if they rejected it? This is simply given as an instance of what might possibly occur.

In the constitution of the Canton of Berne, article 111 provides that no laws may be passed not in conformity with it. Different courts in different districts have placed different constructions upon cantonal measures and there is not necessarily uniformity in deciding whether a Canton Berne law is constitutional or not. In order to remedy this, the assembly passed an amendment last year to the effect that all laws in the Canton must be applied by the cantonal courts without reference to their constitutionality. This would leave the question open for appeal to and decision by the federal supreme court. The people rejected this amendment. In connection with the vote cast upon this measure it is a significant fact that while 66 per cent of the voting strength went to the polls, representing 92,000 ballots, 20,000 voters out of this number ignored the amendment entirely. The reasons for this were that upon the same day the fed-



eral military organization law was voted upon by the entire country, and the interest was centered upon this act. It is said that the constitutional amendment was not clear to the Canton Berne voters in general, and they left it for the decision of those who were interested and who understood it. The federal military organization law was one that affected every Swiss voter directly and brought out a heavy vote in the entire country. This is another illustration of the claim that the people vote on concrete matters well within their comprehension when they are personally interested, whereas abstract questions bring out but a small participation.

#### THE PROPOSED INITIATIVE FOR FEDERAL STATUTES.

The latest developments along the line of the popular initiative in Switzerland is the recently projected introduction of the initiative for federal statutes, whereas now only initiatives concerning constitutional revision are in force. This proposal was first broached by the Cantons Zürich and Solothurn in 1904 in accordance with article 93 of the federal constitution, which reads:

Measures may originate in either chamber and may be introduced by any of their members. Cantons may exercise the same right by correspondence.

This has the same effect as if any State of the United States was permitted to introduce bills in Congress in the same manner as its Members. Consideration of a measure introduced in this manner is not mandatory, as it would be if it were signed by the necessary 50,000 citizens. The Swiss Congress, however, referred the matter to the federal executive council for consideration and report, and its opinion, together with the suggestions of the various Cantons, forms the basis of the following notes:

As the proposal originated with Zürich, let us first consider its reasons for its demand.

*Canton Zürich.*—Both in the constitutional conventions of 1870 and 1872 the introduction of the statutory initiative was considered, but the project of the Federal Executive Council contained mention of neither initiative nor referendum. In the 1872 project, which was rejected by the people, the statutory initiative was included and called for 50,000 signatures or the support of five Cantons. The project of 1874, which was finally accepted by popular vote, contained no such article and provided only for an initiative to demand its total revision. Not until 1891 was the partial revision of the constitution made the subject for popular initiative. Since that time motions have been made for the introduction of the Federal statutory initiative, but without success. At the time the 1874 constitution was accepted it was claimed that the Swiss people had had too little experience of this form of popular government and that its adoption might result in grave danger. We believe at the present time these fears have no further grounds for existence. The statutory initiative in the Cantons has been used moderately. A people is sovereign only when it can achieve its will without the permission of the authorities. The principle of popular rights demands that the initiative be placed side by side with the referendum.

While the referendum never obtains a positive result, can reject, or at best acquiesce, the direct power to propose legislation through the initiative provides the people with a means of gaining legislative



progress. Opinions may be heard by means of the initiative that are not represented in Congress. Life and movement alone keeps the body politic in a healthy condition. The experience of the cantons shows us that excesses are not to be feared. Even should popular opinion defeat a law proposed by the statutory initiative much would have been won by the political discussion that must necessarily clear the situation. We expect that the statutory initiative will bring good and positive results. It is the natural consequence and the necessary corollary of the constitutional initiative. As no restriction exists as to what measures materially may be termed as a constitutional act it is possible under the present conditions to force into the constitution laws or decrees which certainly do not belong there. The opportunity should be offered to the people of achieving its will in proper and correct form. That this is necessary is shown by the introduction into the constitution of the slaughter-house initiative. There is no other constitution that contains such a peculiar feature.

In cantonal matters in Zürich the opinion of the people in judging initiative projects seldom differs from that of the cantonal assembly. The initiative of 1876, which demanded the right of bank-note issue to be granted solely to the cantonal bank of Zürich, which was accepted by the people, was subsequently annulled by the Federal Government on the grounds of unconstitutionality.

There is surely no reason to deny a people the statutory initiative when by the constitutional initiative it already has the power to substitute its present constitution by another at any moment.

*Canton Solothurn.*—This Canton agrees with Zürich in all particulars. In thirty-five years the initiative has been invoked in this Canton seven times.

*Canton Berne.*—Berne has no desire to enter into this controversy, as it neither invoked the proposed change nor supported it. Now that it has been brought forward, however, it believes that the statutory initiative will find its way into the confederation.

*Canton Lucerne.*—Lucerne is not of the opinion that, as the experience of the Cantons shows, the project can prove of any great advantage, but it is the consistent development of the spirit of democracy. It appreciates the potential danger which this new power would bring with it, but does not doubt that the sound sense of the Swiss people will withstand proposals of a demagogic nature.

*Canton Schwyz.*—In Schwyz only one initiative measure has been proposed and it was defeated. Schwyz is opposed to the introduction of the statutory initiative into the confederation for these reasons:

By its use the constitutionally established legislative bodies would be sidetracked; in place of the house and senate would arise an anonymous, free, uncontrolled and uncontrollable alliance of one or more citizens, or even noncitizens, who may project a bill, perhaps in secret, and then secure the necessary number of signatures. Congress would have no choice but to accept such proposals as they stand or to suggest a counter proposal. The people would then be obliged to vote in favor or against the measure without further debate. The underlying purpose of the person or persons who drew it up, as well as their identity, could remain unknown. If the initiative was presented only in the form of a general project and not as a formulated bill the latter scruples would not exist, but the necessity for its introduction is not apparent. It is certain that the Swiss

have never complained of a lack of laws, neither have they experienced that our legislative bodies have been remiss in failing to consider urgent requests and the desires of the people. If the constitutional extension of the popular rights be demanded we suggest the facilitation of the optional referendum or the introduction of the obligatory referendum in federal matters.

*Obwalden (Landesgemeinde).*—In this Canton the initiative is seldom used. Since the expansion of the powers of the confederation has resulted in a corresponding diminution of the sovereignty of the Cantons it is desirable and consistent that the rights of the people in the confederation should correspond to the rights granted them in the Cantons. It must be acknowledged, however, that the introduction of the statutory initiative in the field of federal legislation would be attended by certain dangers, but the sound sense of the Swiss people will oppose any misuses and sinister growths to which the new institution may be subject. The question of the dual majority of both popular vote and Cantons should be considered. (A recent constitutional amendment to the cantonal constitution of Obwalden contained the following remarkable extension of the referendum. Not only laws but also administrative decrees of the Canton and of the communal authorities may be called out for popular vote after they have entered force. The number of signatures required is 400. There is no time limit placed upon this option, and from the time the referendum is demanded until the time of popular vote the law in question must remain suspended. This would appear to be an impediment to all legislation. The clause referring to suspension was not accepted by the Federal Assembly when the revised constitution was placed before that body for its sanction.)

*Unterwalden (Landesgemeinde).*—In this Canton any one voter, as well as associations, boards, and guilds, may offer a project for legislation. Unterwalden considers that the Swiss are ready and worthy to assume the new popular responsibilities. The introduction of the statutory initiative should be subject to these conditions: (a) At least 30,000 voters should sign. (b) Congress should have power to offer counter proposals or amendments. (c) The dual majority of votes of both voters and the Cantons should be made a qualification for the acceptance of any proposed law.

*Glarus (Landesgemeinde).*—Glarus supports Zürich and Solothurn. The sovereignty of the people can be obtained in its fullest sense only through the possibility of direct participation in legislation.

*Zug.*—In twenty-nine years the initiative has been used once in this Canton and without success. Zug has no particular objection to the statutory initiative as an institution. It is questionable, however, if the average political intelligence is sufficiently developed to grapple with projected legislation not only in the limited confines of the Cantons but in the broader field of the entire fatherland. The use of this new power would undoubtedly be paid for dearly at first, and many narrow measures not making for the welfare of the whole people would be brought forward. There is grave danger that its frequent use may result in fatigue and indifference. The number of signatures necessary should not be too small.

*Basel City.*—Basel has no objection to its introduction, provided that in practice the constitutional competence of the confederation of the cantons is not injured. Up to the present time we have intro-

duced only the constitutional initiative in federal matters and the results have shown that purely statutory measures have been brought forward as constitutional amendments. What would be the procedure if a proposed statutory initiative law were unconstitutional? From a judicial point of view it is certain that any unconstitutional project should not be considered. Who, then, is to take the responsibility of deciding upon this point if 50,000 or more voters have signed an initiative petition, when no article exists in our constitution intended to regulate such a contingency? These points are merely mentioned as worthy of consideration in defending the safety of the federal constitution.

*Rural Basel.*—Since 1863 rural Basel has passed upon seven initiative measures, all of which were rejected. The voters should have the opportunity of deciding whether this extension of popular rights should be introduced into the confederation.

*Schaffhausen.*—Schaffhausen believes that if a citizen is permitted to vote in favor or against a legislative provision he should also be empowered to express his wishes for the formulation of laws. We believe that through the initiative favorable laws have come into force at least as quickly as if no initiative privilege had been in use. It seems logical that if the statutory initiative is allowed in the Cantons it should also be permitted in the federation. This form of popular initiative in the Cantons has been exercised by them without particular disadvantage. It seems desirable that the constitution of the confederation should be able to be relieved of such purely statutory legislation as the slaughterhouse ordinance.

*Appenzell exterior (Landesgemeinde).*—Out of 26 initiative measures since 1876 11 were accepted and 15 rejected. Many of these have proved of benefit, others show a reactionary tendency. Exterior Appenzell makes no further remarks.

*Appenzell interior (Landesgemeinde).*—Appenzell Interior is neutral. It does not desire to oppose, neither is it enthusiastically in favor of the project. The statutory initiative in the Cantons is limited to local matters, and the districts are small, whereas the field of national politics is large. It appears that the constitutional initiative and the optional referendum are sufficient for the confederation as a whole. Should the statutory initiative be introduced obligatory voting should be required.

*St. Gallen.*—Since 1890 the initiative in this Canton has been invoked but once. This was in the year 1896 and covered provisions concerning the rate of interest on mortgages, etc. The cantonal assembly favored the plan and it was accepted by popular vote on June 28 of the same year. This law showed no favorable results and was revoked shortly after. The fact that the statutory initiative has worked badly here should not be taken as a standard for its eventual application in the confederation.

*Graubunden.*—The necessity of the statutory initiative in the confederation does not seem to be apparent, although it is the logical extension of the idea of democracy.

*Aargau.*—Aargau has had both good and bad experiences with the initiative, but gives no definite opinion as to its value for the confederation.

*Thurgau.*—The initiative in Thurgau has been invoked five times since 1869, three of which were rejected. Thurgau believes that it is



logical to introduce the statutory initiative since the constitutional initiative already exists. There does not, however, seem to be any apparent necessity for it. Through its eventual introduction the constitutional initiative would be less frequently used. The same effect as the statutory initiative can be obtained through the efforts of members of Congress, the presentation of bills by them, or by popular petition.

*Tessin.*—Tessin gives no definite opinion, but makes no objections.

*Vaud.*—Vaud does not care to oppose the proposal, but assumes that the dual majority of both voters and Cantons would be considered.

*Wallis.*—The question of constitutionality of measures is not clear to the government of Wallis, and the question is raised how any errors of the statutory initiative in this connection could be prevented or corrected. (The statutory initiative has been in force in the Canton of Wallis only for a few months.)

*Neuchatel.*—Neuchatel has used the initiative but twice in twenty-six years. The proposed statutory initiative should be permitted to contain either a general proposal or a formulated bill, the revocation or amendment of existing laws or the enactment of new ones. The majority of both voters and Cantons should be required to insure acceptance of any projects which might be suggested.

*Geneva.*—The present constitutional initiative is sufficient and the proposed statutory initiative does not show any particular progress. We should hesitate to stir up the compromises and strife that preceded the acceptance of the constitution of 1874. (In Geneva the separation of the church and state was recently accomplished after an initiative had been invoked. At present signatures are being obtained to another initiative intended to revoke the accepted provisions of the first one. In the Canton of Neuchatel the separation of church and state was defeated. Geneva has a peculiar regulation concerning the initiative to the effect that when two projects are presented for popular vote, one a popular initiative and the other a counter proposal of the cantonal assembly, but both relating to the same subject, the voter may not only reject both if he desires but he may also accept both. Should it happen that both the initiative and counter proposal receive the same number of votes that of the assembly and not that of the people is the one that enters into force.)

*Fribourg.*—In Fribourg only the constitutional initiative and the obligatory referendum concerning cantonal constitutional matters, as required by the federal constitution, are in force. There is no statutory initiative and no referendum for cantonal laws. Fribourg possesses no veto power whatever, either by the people or by the executive council.

The proposed statutory initiative does not in reality signify any additional rights, as the people are now able to introduce all sorts of measures into the federal constitution. The Cantons are now represented by two members in the Council of States (Senate), who participate in framing national legislation, and by its acceptance the Cantons would be superseded. It is therefore clear that several Cantons have expressed the desire that, provided the statutory initiative is introduced, eventual laws proposed through its use should be accepted by a majority of both voters and Cantons. Another query is this: What is to happen if a project is not in conformity with the

federal constitution? Zürich believes that in such a case the proposal should not be considered. But who is to decide this delicate point? The Federal Assembly is not suited for this purpose, for the reason that its decisions would be opened to criticism on the grounds of prejudice. The advisability of introducing the American system, whereby the highest federal court is empowered to pass upon the question of the constitutionality of a law, should be considered.

*The Federal Government.*—The number of signatures necessary to cause a constitutional amendment to be considered is 50,000, representing slightly more than 6 per cent of the total number of voters. This percentage is smaller than that of any of the Cantons for the introduction of statutory initiatives with the exception of Zürich and Basel city. The same number of signatures should be required for the statutory initiative in the confederation as is now demanded for the proposal of constitutional amendments. It is not intended that the statutory initiative should be invoked for the revocation of administrative acts, nor against treaties with foreign powers; the first would retard the progress of the administration and the second would render international relations impossible.

Some competent instance must be fixed upon to determine the constitutionality of a proposed law or its eventual rejection on the grounds of confliction with existing treaties. The Federal Council believes that the Federal Assembly should be settled upon for this purpose.

The statutory initiative should be able to be presented in either the form of a general request or as a completed bill. The people already possess the right of presenting formulated constitutional amendments, and it does not seem logical to deny this privilege covering projected laws. Any errors in a formulated bill would be corrected in the assembly.

Several Cantons desire the dual majority of both voters and Cantons (the vote of the Canton to be decided by the majority of votes cast within its boundaries). The Federal Council does not believe that the council of States, composed of two members from each Canton, can be considered as representing the Cantons directly, as they vote without instructions. It would be a remarkable state of affairs if the inhabitants of 11 Cantons, representing but one-fifth of the total population, could unite in causing the defeat of a law which had been accepted by the other 11 Cantons, containing, however, four-fifths of the population. The danger that any cantonal power might be infringed upon through any statutory initiative would be removed by the power of Congress to reject unconstitutional measures. When the optional referendum calls out federal laws it is the majority of the voters that decides their acceptance or rejection without recourse to the individual votes of the Cantons. The dual majority has, therefore, not been considered.

In the event of the acceptance of the statutory initiative the procedure would be as follows:

1. When the initiative is in the form of a general request—

Congress first considers the question of the constitutionality of the proposed measure. If the project is one of general application, such as the enactment or amendment of a federal law or the amendment of a federal decree that is general in its application, and provided that Congress agrees with the proposal, a corresponding law or decree must then be enacted. This law or decree would then be subject to

the optional referendum in the same manner as other federal laws that may be passed by Congress, not by means of the initiative. If, however, Congress does not favor the project, it must be placed before the people for their decision as to whether or not they desire a law corresponding in its general application to the initiative measure. If they decide in favor, Congress must then enact a corresponding law or decree, which would then be subject to the optional referendum, as above mentioned. If the referendum is not demanded, the law would enter into force ninety days after its passage, in a similar manner to other federal laws.

2. If the initiative is in the form of a completed bill—

If Congress favors the completed bill and it is passed by that assembly it is subject to the usual optional referendum. If Congress is not in favor an obligatory referendum must be held, and Congress may recommend the rejection of the proposed law or submit a counter proposal. In all cases where a referendum is held the majority of the votes cast decides.

NOTES.—The introduction of the statutory initiative into the Federal Government would necessitate an amendment of the federal constitution, which can only be accepted in the event of a dual majority of both Cantons and voters. Should a majority of the Cantons fail to accept such an amendment, even though the popular vote may show a strong majority in its favor, the amendment would be lost. It will be noted from the opinions of the Cantons as above mentioned that many, particularly the small Cantons and those where the Roman Catholic religion is dominant, desire to couple its acceptance with the requirements of the frequently mentioned dual majority. The question of constitutionality of proposed laws is also made the subject of careful consideration by several of the powerful Cantons. The suggestion of the Canton of Fribourg that the American system should be adopted is doubly interesting for the reason that Fribourg itself is the only Swiss Canton retaining a purely representative form of government.

Professor Hilty, the venerable observer of things Swiss and foreign, lecturer at the University of Bern on international law and Swiss federal and cantonal law, says in this regard:

The question is, in fact, whether sufficient sound common sense is possessed by the Swiss people to preclude exaggeration and eccentricity in the application of this projected extension of the popular initiative. But this is the question of democracy in general.

Congress has not yet considered the proposed statutory initiative which has been explained at length above; but has returned the message to the Federal Council for further consideration. It will be some time before the question of its introduction will be placed before the people.

#### ADVANTAGES AND DISADVANTAGES.

*The referendum.*—While in the Cantons the referendum applies to all laws and decrees (with the exception of financial measures under a certain amount), in the Federal Government matters subject to the referendum are (1) laws, and (2) decrees and resolutions of a general character not of an urgent nature, that may be called out by 30,000



voters. Treaties, the budget and financial measures are not subject to the federal referendum. Even the leaders of the socialistic party in Switzerland are opposed to the inclusion of financial measures in those subject to the referendum. How, then, is the line to be drawn between the different forms of legislation—those that may or may not be called out for popular vote? A federal law can not be withheld; a federal decree or resolution of a general nature, styled urgent, may, however, be withheld; a federal decree not determined by Congress as being general in its application is not subject to the optional referendum. No law regulates this distinction, although its necessity has been acknowledged. Congress itself is the sole judge of the designation of the category into which a measure is to be placed.

The question frequently arises in congress whether or not the so-called "referendum clause" should be attached to a measure, and whether it should be designated as a law (*Gesetz*) or a decree (*Beschluss*). The case has arisen that a purely administrative measure was styled a decree in its title and referred to as a law in its text.

It has been claimed by several writers that the referendum in Switzerland breaks party lines. It is difficult to support this statement. The fact that a measure is called out by 30,000 voters shows a certain opposition to it, and a regular campaign follows, speeches are made for and against the projected law, the press is brought into play, and the greater part of those who vote do so on party lines. Many business men make it a principle never to sign a referendum or initiative petition for fear of offending customers. I have heard intelligent citizens say: "No; I did not vote yesterday. The measures did not interest me. We have placed in our assembly representatives who have been in public life so long that I believe they are able better to judge our necessities than we are ourselves, since we need all our time for business."

The referendum necessarily keeps legislation popular and at the same time places all the responsibility upon the people. Doubt is dispersed. When the people have decided, quiet reigns, and there can be no claims that force was used. But this can be true only in a country where existing conditions reduce to a minimum the possibility of corruption, repeating, ballot-box stuffing, the purchase of votes and its attending moral degradation.

*The initiative.*—The initiative has been called the natural corollary of the referendum. Technically this is not correct; there is no other veto power in Switzerland except the referendum, whereas the right to propose legislation may be exercised by Congress and the cantonal assemblies as well as by ordinary petition. The Swiss referendum has no substitute; it is sole; while the initiative is, at its best, an auxiliary power.

Political leaders favor it. With a good organization a measure can not be accepted that the majority party does not desire. The leaders of the minority parties favor it because it gives them opportunity to force an assembly to consider any project to which they can secure the requisite number of signatures. The initiative in Switzerland has been compared to a safety valve. It should be used only in cases of dire necessity. Brought into play too often results in a waste of energy, to the detriment of the powers of the political engine.



## CONCLUSION.

The most important and far-reaching Swiss laws have been placed upon the statute books by proposals originating in Congress and not by means of the initiative, which has existed in the Federal Government only since 1891. The great questions of centralization, civil status, laws of marriage and divorce, bankruptcy laws, the customs tariffs, the railroad purchase, employers' liability, factory laws, unity of the conflicting cantonal civil and criminal laws into a federal code, the military organization, the pure-food law, etc., all of which are things of the past, were congressional measures.

It may safely be said that the initiative can be of decided and positive value only in districts small enough to enable the average citizen to form a conscientious opinion upon projects of such local significance as to be well within his practical knowledge, but, in addition, he must exercise his duty as he sees it at the polls. With a comparatively small number of signatures requisite for an initiative measure, its danger lies in the fact that it may easily be prostituted by factions, cliques, malcontents, and demagogues to force upon the people projects of partisan, freak, or unnecessary legislation.

It is curious that in Switzerland figures and not percentages are used to determine the signatures necessary for initiative proposals, with the natural result that an increase in the population results in a corresponding decrease in the proportion required. At the time of the acceptance of the federal constitution in 1874 there were approximately 600,000 voters, and 50,000 of these could demand total revision at any time. The present voting strength is 807,000, but the number of requisite signatures has not been increased. The percentage has thus decreased from 8.5 in 1874 to 6.19 in 1908.

In the Landsgemeinde Cantons dissatisfaction has been displayed in some quarters of late and the claim has been made that those in power have been overriding the popular expressions of opinion in the "open-air" meetings. Some go so far as to say that the counting of hands has been misrepresented. The advisability of introducing the ballot box and written ballot has been raised as these conferences are becoming unwieldy with the increase in population. Under the stress of excitement and swayed by the arguments of a dominant leader many, it is claimed, raise their hands for or against a measure when careful consideration and a written secret ballot would, perhaps, cause a difference of opinion. The territory covered by the Landsgemeinde Cantons is so small that, while they possess the same rights and privileges of their larger neighbors, their affairs may be compared with those of a township and their yearly conference to the New England "town meeting."

The last Cantons to introduce statutory initiative were Lucerne in 1906 and Wallis in 1907. The indifference heretofore mentioned is again illustrated by the example of Lucerne, where the acceptance of the constitutional amendment that stipulated this extension of popular rights was voted upon by only 3,516 voters out of a total voting strength of 36,177. General opinion conceded in its acceptance and for that reason an active participation was not deemed necessary. It has been said of the Swiss that they demand all the rights but shirk many of the duties of citizenship. The frequency

of the plebiscites and the number of more or less unimportant measures in the Cantons in which the voters are not directly interested may furnish some ground for excuse.

Generally speaking, as far as Switzerland is concerned, the extension of popular rights, usually presented with considerable ostentation, arises less from a sense of necessity felt by the people than from purely tactful considerations of the political leaders who themselves give impetus to the movement. The Swiss have little to fear from their legislators. They are a body of intelligent, fearless, and upright men, supported by people possessing the right to overthrow, yet who weigh well the sound counsel of those whom they have trusted so long. Deprive the Swiss of their popular rights and their welfare would be safeguarded in the same high degree as heretofore.

The referendum exists in Switzerland because it is the sole veto power and is the fruit of the historical growth of centuries.

If the initiative in Switzerland has not accomplished any important measure of positive good that could not have been secured through the usual legislative channels, it certainly has done no particular harm. The advantage to be gained by its introduction into another country entirely dissimilar furnishes a questionable theme, and it remains to consider that, perhaps, an ounce of American primary and representative prevention is worth a pound of Swiss initiative cure.







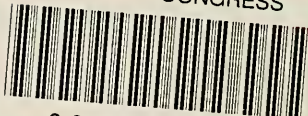








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